

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C.

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In the Matter of)	GC Docket No. 92-52
)	
REEXAMINATION OF THE POLICY)	RM-7739
STATEMENT ON COMPARATIVE)	RM-7740
BROADCAST HEARINGS)	RM-7741
)	

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To: The Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS ON SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

1. Prairie Broadcasting, Inc. ("Prairie"), hereby files its comments in response to the Commission's Second Further Notice of Proposed Rulemaking, FCC 94-167, (released June 22, 1994) requesting comments to address questions arising from Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993).

2. In its Notice, the Commission stated that the United States Court of Appeals for the District of Columbia had ruled that the integration of ownership into management, one of the principal criteria used in evaluating applicants for new broadcast facilities, was arbitrary and capricious and therefore unlawful. The court directed the Commission to evaluate applicants before it under standards free of the integration criteria.

3. Specifically, the Commission requested commenters to address: (A) how the Commission can comply with Bechtel by (1) identifying what objective and rational criteria can be used to evaluate competing applications for construction permits for new broadcast facilities, (2) addressing the impact of Bechtel on the factors previously considered as enhancements to integration proposals, i.e., local residence and civic participation,

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minority status and broadcast experience, and (3) the relative weight to be given to the various comparative criteria in an analysis that does not rely on integration; (B) the procedural ramifications of applying a revised comparative analysis to pending cases, e.g., whether applicants should be permitted to amend their applications in light of newly-adopted standards and the requirement for further evidentiary proceedings; and (C) how any proposed revision of the comparative analysis could be structured to satisfy the concerns which led the Court of Appeals to rule that integration was arbitrary and capricious, particularly the Court's concern over the lack of empirical data to support a conclusion that the integration policy successfully promotes the public interest.

4. Since September 1989, Prairie has been an applicant in a hotly contested comparative proceeding for a construction permit for a new commercial FM radio station. (MM Docket No. 91-100).^{1/} Consequently, Prairie has expended an enormous amount of time, effort and financial resources in the prosecution of its application before the Commission. In its application, Prairie claimed credit for 100% proposed integration and 100% female ownership as well as local residence, civic involvement and prior broadcast experience. While the case was pending before the Review Board and before the scheduled oral argument took place, the Commission froze all comparative proceedings because of the Court's holding in the Bechtel case. In addition,

^{1/} Prairie is serving a copy of these Comments on all parties to the hearing proceeding in compliance with the Commission's ex parte rules.

after Prairie filed its application in September 1989, the gender preference previously given females in awarding new broadcast facilities was eliminated as a result of the D.C. Court of Appeals ruling in Lamprecht v. FCC, 958 F.2d 382 (D.C. Cir. 1992). That ruling was largely based on the Court's perceived lack of empirical data to support the conclusion that females were under-represented in the ownership of broadcast facilities.

5. Against this backdrop, Prairie offers the following comments as requested by the Commission in its Second Further Notice of Proposed Rulemaking. In active comparative proceedings where the applications were filed and prosecuted in light of the then existing integration policy, a modification of the integration policy and hearing procedures, rather than a wholesale disposal of the integration policy, would comply with Bechtel, provide the most efficient disposal of the currently pending cases and use of administrative resources and be fairest to all applicants. Although Prairie acknowledges that the Bechtel decision is subject to interpretation, Prairie's interpretation of the Court's ruling in Bechtel differs from that of the Commission. Prairie interprets the case as holding that the integration policy as applied is arbitrary and capricious because applicants who do not propose to integrate into management are not permitted to show that their proposed ownership/management structure serves the public interests that the integration policy was originally designed to serve.^{2/}

^{2/} Localism and service to the community of license have been fundamental public interest concerns since the inception of broadcasting.

Therefore, based on this interpretation, the integration policy could retain its role as a principal criteria in comparative proceedings so long as: (a) those applicants who have not proposed to integrate ownership into management have an opportunity to show that their proposal will achieve the same goals intended to be served by the integration policy; and (b) the evidence presented by such applicants is rationally and fairly considered by the Commission in determining which applicants are most likely to best serve the public interest. This would eliminate the Court's concern that applicants who do not propose to integrate into management in a traditional manner are automatically eliminated from contention without consideration of whether the applicant's individual proposal and qualifications actually serve the public interest better than an applicant who proposes integration. Except as discussed below, the relative weight to be applied to traditional integration enhancement criteria of local residence and civic participation, minority status and broadcast experience would remain relatively unchanged.

6. With such a modification in the comparative proceeding criteria, the need for further evidentiary hearings would be minimized. Further evidentiary hearings would be required only to permit applicants who did not initially propose to integrate to present evidence, if any, that a non-integrated management proposal serves the public interests designed to be served by the integration policy. Minimizing the number of additional evidentiary hearings required by the regulations will preserve present administrative resources and permit the most rapid

disposal of the present cases. Further, because the evidence presented at previous hearings would remain relevant and the rulings based upon such evidence would remain viable, the resources previously expended by the Commission and the applicants would not be wasted. The Commission has the resources to conduct follow-up inquiries to gather sufficient empirical data to support the success of the integration policy in serving the public interest.

7. To preserve resources and provide the most efficient method for resolving pending comparative proceedings, Prairie recommends that the Commission reject any proposals to permit applicants to amend their applications in light of any modification of the integration policy. Permitting applicants to amend their applications at such a late date would create chaos and be extremely unfair to all other applicants. Prairie also recommends that the Commission reject proposals to lift the settlement caps in pending comparative proceedings. Although lifting the settlement caps may promote the settlement of some currently pending proceedings, it will surely encourage other applicants not to dismiss or to unreasonably hold out for a profit.

8. Finally, Prairie submits that the gender preference should be reinstated in awarding broadcast facilities. There is widespread evidence that women have had difficulty breaking into

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the ownership ranks in the communications industry. For instance, the House Report on the Cable Television Consumer Protection and Competition Act of 1992 (H.R. 102-628, 102d Cong., 2d Sess.) stated at p. 114:

The Committee notes that while the employment record of the broadcast television industry has improved in the year since the Commission first adopted equal employment opportunity regulations, women and minorities are still significantly underrepresented as employees and owners in the industry.

Respectfully submitted,

PRAIRIE BROADCASTING, INC.

By: 

Kimette Glenn

CERTIFICATE OF SERVICE

I, KIMETTE GLENN, hereby certify that I have this 22nd day of July, 1994, mailed by first class United States Mail, postage prepaid, copies of the foregoing "**COMMENTS ON SECOND FURTHER NOTICE OF PROPOSED RULEMAKING**" to the following:

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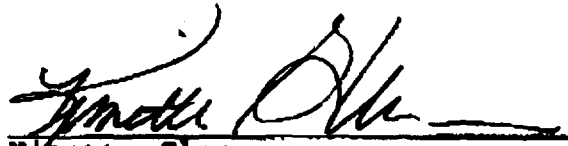
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